
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ACS Wireless)	File Numbers: EB-04-AN-024
Anchorage, Alaska)	EB-04-AN-027
)	
Registrant of Antenna Structures)	NAL/Acct. No. 200532780001
ASR #1022129, Kasilof, Alaska)	FRN: 0001567940
ASR #1006025, Soldotna, Alaska)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 8, 2004

By the Resident Agent, Anchorage Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that ACS Wireless ("ACS"), registrant of antenna structures #1022129, Kasilof, Alaska and #1006025, Soldotna, Alaska, apparently willfully and repeatedly violated Section 17.57 of the Commission's Rules ("Rules")¹ by failing to immediately notify the Commission of a change in the ownership information for Antenna Structure Registrations ("ASR") for the above-referenced antenna structures. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that ACS is apparently liable for a forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. On July 29, 2004, agents from the Anchorage Resident Agent Office inspected antenna structures #1022129 and #1006025. At the time of inspection, the ASRs listed the Municipality of Anchorage, d/b/a/ Mactel, Inc. as the registered owner. The agents observed, at each antenna structure site, a posted sign indicating ACS Wireless as the site manager.

3. On September 21, 2004, an Anchorage agent sent ACS two Letters of Inquiry, requesting further information concerning the ownership of the two antenna structures. ACS replied on October 18, 2004.³ In its Responses, ACS admitted to acquiring ownership of antenna structures #1022129, and #1006025 on May 14, 1999. ACS also admitted that it was aware of the requirement to notify the Commission upon a change in antenna structure ownership information for structures assigned an ASR number. ACS stated that in 1999, it hired a number of people to address the numerous name changes and

¹47 C.F.R. § 17.57.

²47 U.S.C. § 503(b).

³Letters from ACS to the Anchorage Resident Agent Office (October 18, 2004) ("Responses"). ACS requested and received an extension of time for the filing of the Responses.

ownership changes resulting from ACS's acquisition of four local exchange companies, a wireless company, and a long distance company. ACS asserts that it believes appropriate steps were taken to indicate the appropriate ownership of its numerous entities but that some changes were overlooked or missed. ACS also indicated that on October 13, 2004, it filed an FCC Form 854 for each of the antenna structures to update the ownership information for each structure.⁴

4. On November 1, 2004, an Anchorage agent reviewed the Commission ASR database and confirmed the ASRs now accurately reflect ACS as the current owner of antenna structures #1022129, and #1006025.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁶

6. Section 17.57 of the rules requires the owner of an antenna structure to immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information.⁷ We require antenna structure owners to maintain current antenna structure registration information with the Commission and post ASR numbers at the base of antenna structures to allow for easy contact if problems arise.⁸ At the time of inspection on July 29, 2004, the ASR for antenna structures #1022129 and #1006025 listed the Municipality of Anchorage, d/b/a Mactel, Inc. as the owner. ACS admitted it had been the owner of antenna structures #1022129 and #1006025 since 1999 but had failed to update the ownership information in the antenna structures' ASRs until contacted by a Commission agent. ACS acknowledges that it has known of the requirement to update ASR ownership information with the Commission since 1999. Therefore, ACS's violation is willful. ACS's violation occurred on more than one day, therefore, it is repeated.

7. Based on the evidence before us, we find that ACS willfully and repeatedly violated Section 17.57 of the Rules by failing to immediately notify the Commission of a change in the ownership information for Antenna Structure Registration ("ASR") numbers #1022129 and #1006025.

8. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of

⁴See ASR File Numbers A0400123 and A0400118, filed October 13, 2004.

⁵Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁶Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁷47 C.F.R. § 17.57.

⁸See, e.g., *American Tower Corporation*, 16 FCC Rcd 1282 (2001) (Notice of Apparent Liability); *American Tower Corporation*, 16 FCC Rcd 14937 (2001) (Consent Decree between the Commission and American Tower Corporation).

the Rules, the base forfeiture amount for failure to file required forms or information with the Commission is \$3,000.⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors, a \$6,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, ACS Wireless is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of six thousand dollars (\$6,000) for violations of Section 17.57 of the Rules.¹¹

10. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, ACS Wireless SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

12. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Anchorage Resident Agent Office, P.O. Box 221849, Anchorage, Alaska, 99522-1849 and must include the NAL/Acct. No. referenced in the caption.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability for Forfeiture under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

⁹12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁰47 U.S.C. § 503(b)(2)(D).

¹¹47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80, 17.57.

¹²*See* 47 C.F.R. § 1.1914.

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15. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to ACS Wireless, 600 Telephone Avenue, Anchorage, Alaska 99503.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Windel
Resident Agent
Anchorage Resident Agent Office
Western Region
Enforcement Bureau